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20 UNITED STATES DISTRICT COURT
21 NORTHERN DISTRICT OF CALIFORNIA
22 SAN FRANCISCO DIVISION

23 ORACLE AMERICA, INC.
24 v.
25 GOOGLE INC.
26
Defendant.

Case No. CV 10-03561 WHA

**DECLARATION OF ANNETTE L.
HURST IN SUPPORT OF ORACLE'S
STATEMENT REGARDING DR.
KEARL'S LACK OF COMPLIANCE
WITH THE COURT'S ORDER**

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Dept.: Courtroom 8, 19th Floor
Judge: Honorable William H. Alsup

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1 I, Annette L. Hurst, declare and state as follows:

2 1. I am a member of the bar of the State of California, admitted to practice before this
 3 Court, and am a partner with the law firm of Orrick, Herrington & Sutcliffe LLP, attorneys of
 4 record for Plaintiff Oracle America, Inc. I am familiar with the events, pleadings and discovery
 5 in this action and, if called upon as a witness, I could and would testify competently to the matters
 6 stated herein of my own personal knowledge.

7 2. I submit this declaration in support of Oracle's Statement Regarding Dr. Kearl's
 8 Lack of Compliance with the Court's Order.

9 3. Counsel for Dr. Kearl, John Cooper, forwarded an email to me on August 20
 10 indicating that Dr. Kearl's report and testimony from the *Apple v. Samsung* case could be
 11 downloaded from an FTP site supplied by Quinn Emanuel. Attached hereto as **Exhibit 1** is a
 12 true and correct copy of Mr. Cooper's email to me.

13 4. Quinn Emanuel was Samsung's counsel in the *Apple v. Samsung* matter. We
 14 downloaded the materials they supplied on their FTP site, which comprised nearly 2,000 pages.
 15 Attorneys working pursuant to my supervision reviewed these documents and reported that (1) all
 16 but the trial testimony was marked "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES
 17 ONLY," and (2) many of the documents that were marked AEO were heavily redacted. Upon my
 18 discussions with my colleagues and review of certain materials, I concluded that it was not
 19 possible to ascertain the precise nature of Dr. Kearl's royalty analysis in the *Apple v. Samsung*
 20 case because of these redactions.

21 5. For example, attached hereto as **Exhibit 2** is a true and correct copy of excerpts of
 22 the redacted version of Dr. Kearl's Corrected Expert Report in *Apple v. Samsung* as produced by
 23 Quinn Emanuel.

24 6. Attached hereto as **Exhibit 3** is a true and correct copy of excerpts of the redacted
 25 version of schedules which appear to be schedules to Dr. Kearl's original Expert Report in *Apple*
 26 *v. Samsung* as produced by Quinn Emanuel. Some of the schedules were not included at all in the
 27 copy of the Corrected Expert Report Samsung's counsel produced.

28 7. Attached hereto as **Exhibit 4** is a true and correct copy of a document with the

1 filename KEARL01405.pdf. Quinn Emanuel produced it in an entirely redacted form, and it is
2 impossible to discern the role that this document played in Dr. Kearl's analysis.

3 8. Attached hereto as **Exhibit 5** is a true and correct copy of excerpts of the redacted
4 version of Dr. Kearl's deposition from *Apple v. Samsung* as produced by Quinn Emanuel.

5 9. After we reviewed the documents and concluded they were substantially
6 inadequate to convey the substance of Dr. Kearl's work in the other case, I emailed Mr. Cooper to
7 meet and confer about the redactions and asked that Dr. Kearl produce complete copies of his
8 report and testimony in unredacted form. He stated that Dr. Kearl did not "control" the contents
9 of his reports because of the protective order in *Apple v. Samsung*. I then followed up further
10 with Mr. Cooper and asked him to confirm that Dr. Kearl did not have the report, schedules and
11 testimony in his "**possession or control**" (emphasis added). Again, Mr. Cooper responded by
12 evading the question about possession and asserted that Dr. Kearl lacked "control" over the report
13 from that case. At no point did Mr. Cooper indicate that either of the parties from that case had
14 objected to production, or that there was a required procedure for addressing such a potential
15 objection. He did not explain the redactions. Attached hereto as **Exhibit 6** is a true and correct
16 copy of this email exchange with Mr. Cooper.

17 10. After Mr. Cooper's second response, I obtained a copy of the protective order in
18 *Apple v. Samsung* in order to ascertain how it might relate to the production of Dr. Kearl's
19 materials. Attached hereto as **Exhibit 7** is a true and correct copy of the protective order in *Apple*
20 *v. Samsung* (ECF 512).

21 11. Attached hereto as **Exhibit 8** is a true and correct copy of trial transcript excerpts
22 from *Apple v. Samsung*.

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1 I declare under penalty of perjury under the laws of the United States that the foregoing is
2 true and correct.

3 Executed this 10th day of September, 2015, at San Francisco, California.
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5 */s/ Annette L. Hurst*
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7 Annette L. Hurst
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